FILE COPY

FILED

APR 19 1932

CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 672

PLANTERS' COTTON OIL COMPANY, INC., *et al.*,
PETITIONERS,

v.

GEORGE C. HOPKINS, Collector of Internal Revenue for the Second District of Texas,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF AMICI CURIAE

FREDERICK H. WOOD,
HOYT A. MOORE,
A. JAMES SLATER,
Amici Curiae.

CRAVATH, DE GERSDORFF, SWAINE & WOOD,
Of Counsel.

INDEX

PAGE

The Opinions Below ..... ftn. 1
The Question Presented 1
Statement of Facts 2
Argument 4

(I) The Fundamental Problem Involved 4
The First Answer 5
The Second Answer 6
The Third Answer 7

(II) The Circuit Court of Appeals for the Third Circuit, in its Opinion in the *National Slag Company* case, has stated the only defensible answer to the Fundamental Question as to who or what is the "taxpayer" within the meaning of Section 206(b) of the Revenue Act of 1926 when that Section is applied to consolidated returns filed pursuant to Section 240 of that Act 12

(III) The "taxpayer", when such term is applied to the provisions of the Revenue Act of 1926 which involve consolidated returns, means the underlying economic unit which in the case of a class A affiliation is the "parent corporation" which "owns at least 95 per centum of the other or others"—and in the case of a class B affiliation is the stock owning interest (or interests) which is taxed through the "principal reporting corporation", as such term is used in Article 632 of Regulations 69 21

Conclusion 26

CITATIONS

Cases

Alabama By-Products Corp. v. *Commissioner*, 16 B. T. A. 1073, 18 B. T. A. 919 ..... 9, 26
Bogle & Co., W. S. v. *Commissioner*, 26 Fed. (2nd) 771 17
Bowman Hotel Corp. v. *Commissioner*, 24 B. T. A. 1193 26
Buckie Printers Ink Co. v. *Commissioner*, 19 B. T. A. 943 9
Bush v. *Commissioner*, 50 Fed. (2nd) 800 18
Commissioner v. *Ginsburg Co.*, 54 Fed. (2nd) 238 7
Commissioner v. *Shillito Realty Co.*, 39 Fed. (2nd) 830 17
Fidelity National Bank & Trust Co. v. *Commissioner*, 39 Fed. (2nd) 58. 17
Flannery & Co. v. *Commissioner*, 42 Fed. (2nd) 11 17
Golden Cycle Corp. v. *Commissioner*, 51 Fed. (2nd) 927 17
Handy & Harmon v. *Burnet*, 284 U. S. 136 ..... 16, 20
Hutt Contracting Co. v. *Commissioner*, 17 B. T. A. 818 ..... 9.
Ice Service Company v. *Commissioner*, 30 Fed. (2nd) 230 17
Lavenstein Corp. v. *Commissioner*, 25 Fed. (2nd) 375 17
Moore Cotton Mills Company v. *Commissioner*, 49 Fed. (2nd) 59; 17 B. T. A. 662 26

PAGE

National Slag Co. v. *Commissioner*, 47 Fed. (2nd) 846, 16 B. T. A. 1310 ..... 6, 12, 13, 14, 26
Pelican Ice Co. v. *Commissioner*, 37 Fed. (2nd) 285 17
Pittsburgh Gasoline Co. v. *Commissioner*, 21 B. T. A. 297 9
Planters Cotton Oil Co. v. *Commissioner*, 53 Fed. (2nd) 825 25
Struthers-Ziegler Cooperage Co. v. *Commissioner*, 18 B. T. A. 537 9
Sweets Co. of America v. *Commissioner*, 40 Fed. (2nd) 436, 12 B. T. A. 1285 ..... 7, 9, 26
Swift & Co. v. *United States*, 38 Fed. (2nd) 365 ..... 8, 23
United States v. *Cleveland, Painesville & Eastern Railroad Co.*, 42 Fed. (2nd) 413 17
Warren-Nash Motor Company v. *Commissioner*, 21 B. T. A. 897 9
Woolford Realty Co. v. *Rose*, 44 Fed. (2nd) 856, 53 Fed. (2nd) 821; No. 582, October Term 1931 ..... 3, 4, 5, 7, 8, 9, 12

STATUTES

Revenue Act of 1918, c. 18, 40 Stat. 1061, 1081
Sec. 204 15
Sec. 240 ..... 15, 16
Sec. 1309 25

Revenue Act of 1924, c. 234, Sec. 206, 43 Stat. 260 13

Revenue Act of 1926, c. 27, 44 Stat. 9
Sec. 2 ..... 2, 22
Sec. 206 ..... 4, 5, 6, 7, 9, 10, 12, 14, 18, 19, 20, 21, 23, 24, 25, 26
Sec. 232 9
Sec. 234 10
Sec. 240 ..... 5, 10, 11, 12, 14, 17, 19, 20, 21, 22, 25
Sec. 1101 24

MISCELLANEOUS

A. R. R. 448, 4 C. B. 314 17
A. R. R. 624, 5 C. B. 234 17
A. R. R. 2958, II-2 C. B. 214 17
G. C. M. 6640, VIII-2 C. B. 212 17
House Report No. 2, 70th Congress, 1st Session, page 20 17
I. T. 1386, I-2 C. B. 32 17
I. T. 1600, II-1 C. B. 184 17
I. T. 2261, V-1 C. B. 100 17
I. T. 2355, VI-1 C. B. 98 17
L. O. 1113, III-2 C. B. 36 17
O. D. 415, 2 C. B. 226 17
S. M. 1530, III-1 C. B. 307 17
S. M. 2683, IV-1 C. B. 238 17
S. M. 3384, IV-1 C. B. 277 17
Senate Report No. 617, 65th Congress, 3rd Session, pages 7 and 9 ..... 15, 16
Senate Report No. 960, 70th Congress, 1st Session, page 14 18
T. D. 4022, June 14, 1927 23
Treasury Regulations 45 (1920 Edition) Art. 631 16
Treasury Regulations 69, Art. 632 21
Treasury Regulations 75, Art. 41(c) 21

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 672

PLANTERS' COTTON OIL COMPANY, INC., *et al.*,
PETITIONERS,

v.

GEORGE C. HOPKINS, Collector of Internal Revenue,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

May it please the Court:

The undersigned respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amici curiae*.

FREDERICK H. WOOD,
HOYT A. MOORE,
A. JAMES SLATER,
Amici Curiae.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931

No. 672

PLANTERS' COTTON OIL COMPANY, INC., *et al.*,
PETITIONERS,

v.

GEORGE C. HOPKINS, Collector of Internal Revenue,
RESPONDENT.

BRIEF OF AMICI CURIAE

THE QUESTION PRESENTED

The question presented by the case at bar[1] is whether under the provisions of the Revenue Act of 1926[2] a statutory net loss sustained by a company during a year in which it was affiliated with other companies and which net loss in the year in which it was sustained was not absorbed in the process of calculating the consolidated net income of the affiliated group for that year may in the succeeding year be allowed as a deduction in calculating the consolidated net income of the same affiliated

[1]The opinion of the District Court in this case is reported in 47 Fed. (2nd) 659, and of the Circuit Court of Appeals, Fifth Circuit, in 53 Fed. (2nd) 825.

[2]c. 27, 44 Stat. 9 *et seq.*

group, even though the affiliated company which sustained the loss in the preceding year sustained an additional loss in the succeeding year, in which period the other members of the affiliated group had net incomes.

STATEMENT OF FACTS

The facts in this case, having been fully outlined in the briefs of the parties in interest, are here stated schematically as follows:

Tax Yr.	Company I Waxahachie Association[3]	Company II Ennis Association[3]	Company III Farmers' Gins, Incorporated	Company IV Planters Oil Company, Waxahachie	Company V Planters Oil Company, Ennis
1924	NET LOSS	NET LOSS	(Not in existence)	(Not in existence)	(Not in existence)
1925	LOSS	LOSS	INCOME	INCOME	INCOME
	Throughout each of the years Chapman owned over 96% of the stock of all companies in existence in that year. (R. 11-12.)				

Companies I and II filed a consolidated return for the taxable year 1924. During the taxable year 1925[4] Chapman organized Companies III, IV and V[5] and transferred to them certain of the assets of Companies I and II in consideration of the issue to Chapman of substantially all of the stock of Companies III, IV and V (R. 12.). The assets so transferred were the entire assets of the new companies.

---

[3]A joint stock association (R. 11.), which under the provisions of the Revenue Acts is treated as though it were a corporation (Sec. 2(a) (2), Rev. Act of 1926).

[4]Such taxable year ended June 30, 1925.

[5]Company III was incorporated on September 6, 1924; and Companies IV and V were incorporated on August 18, 1924.

The question presented by the case at bar may be restated as follows: May the 1924 net losses of Companies I and II be deducted from the 1925 incomes of Companies III, IV and V in calculating the 1925 consolidated net income of all five companies, it being conceded that the 1925 losses of Companies I and II may be properly so deducted?[6]

The case at bar is to be carefully distinguished from its companion case, *Woolford Realty Company* v. *Rose* (hereinafter referred to as the *Woolford* case),[7] the pertinent facts in which may be stated schematically as follows:

Tax Yr.	Company I Piedmont Savings Company	Company II Woolford Realty Company
1925	NET LOSS	(In existence but not affiliated with Company I)
1926	NET LOSS	(In existence but not affiliated with Company I)
	Company I was not affiliated with Company II during these years	
1927	LOSS	INCOME
	During 1927 96% of the stock of Company I was owned by Company II	

[6]Both the District Court (47 Fed. (2nd) 659) and the Circuit Court of Appeals (5th) (53 Fed. (2nd) 825) refused to allow the deduction.

[7]The opinion of the District Court in the *Woolford* case is reported in 44 Fed. (2nd) 856, and of the Circuit Court of Appeals, Fifth Circuit, in 53 Fed. (2nd) 821; the *Woolford* case is No. 582 on the calendar of the Supreme Court of the United States for the October term 1931 (*certiorari* granted on January 25, 1932).